# **November 7, 2006**

#### **DECISION AND ORDER**

#### OF THE DEPARTMENT OF ENERGY

# **Appeal**

Name of Petitioner: Glen Bowers

Date of Filing: October 10, 2007

Case Numbers: TFA-0226

On October 10, 2007, Glen Bowers filed an appeal from a determination issued to him on September 7, 2007 by the Department of Energy's (DOE) Office of Legacy Management (OLM). This determination responded to a request for information Mr. Bowers submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. OLM was unable to locate documents responsive to Mr. Bowers' request. This appeal, if granted, would require OLM to perform an additional search and either release any newly discovered responsive documents or issue a new determination justifying the withholding of any portions of those documents.

# I. Background

Mr. Bowers filed a FOIA request for a copy of the Atomic Energy Commission Newsletter entitled "Rocky Flats Plant Crossroad: The Paper," dated September 12, 1959, Volumes 18 and 19. See Letter from Glen Bowers to DOE Office of Freedom of Information Act (April 12, 2007). Mr. Bowers indicated that this newsletter contained articles and photographs of his father, John Wyley Bowers, during the time that he performed work for the Atomic Energy Commission. See Letter from Glen Bowers to OHA (received August 10, 2007) (Appeal Letter). By a letter dated April 26, 2007, the Director of DOE's Headquarters FOIA Office (DOE/FOI) informed Mr. Bowers that his request was being forwarded to OLM because any document responsive to his request, if it existed, would fall under the jurisdiction of that office. OLM then forwarded the request to the Rocky Flats Project Office (Rocky Flats) to conduct the search. Rocky Flats searched its records for newsletters from that time period but was unable to locate the requested document. In a September 7, 2007 determination letter sent to Mr. Bowers, the Director of OLM informed Mr. Bowers that the only September 1959 editions of any newsletter that Rocky Flats located in its microfilm records were those entitled Dow

Corral and dated September 4, 1959 and September 18, 1959. See Letter from Michael W. Owen, OLM, to Glen Bowers (September 7, 2007) (Determination Letter). The Director further stated that the editions that Rocky Flats located were incomplete and contained no mention of Mr. Bowers' father. Id. In his Appeal, Mr. Bowers challenges the adequacy of the search, primarily on the grounds that it was not the Dow Corral that he requested, but the Atomic Energy Commission Newsletter. See Appeal Letter.

# II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) (citations omitted). "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Dep't of State*, 779 F.2d 1378, 1384-85 (8<sup>th</sup> Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Todd J. Lemire*, 28 DOE ¶ 80,239 (2002) (Case No. VFA-0760).<sup>2</sup>

In reviewing this appeal, we contacted Rocky Flats to ascertain the scope of its search for responsive documents and were informed that the *Dow Corral* was the only agency newsletter published or disseminated at Rocky Flats during September 1959. *See* Email from Pamela Watson, OLM to Avery Webster, OHA (Received October 24, 2007) (Email). A search of the historical records of the Rocky Flats facility yielded the following information concerning the *Dow Corral*. The *Dow Corral* was an employee newsletter that was published on a biweekly basis and microfilm records included editions published on September 4, 1959 and September 18, 1959. *See* Determination Letter. The September 4, 1959 issue is "Number 18" and the September 18, 1959 issue is "Number 19," confirming that there was no issue dated September 12, 1959. *Id.* In addition, a search was conducted for a "September 12" issue of the Dow Corral for any year which yielded no responsive records. *See* Email. Further, no records were found of any other editions of the Dow Corral published in September 1959. *Id.* 

Rocky Flats informed us that it performed a search of the microfilm records and all available electronic resources using Mr. Bowers' father's name and identified no records responsive to Mr. Bowers' request. *See* Memorandum of Telephone Conversation between Pamela Watson, OLM, Andrea Wilson, Source One at Rocky Flats, and Avery Webster, OHA (October 16, 2007). Further, a search conducted of Rocky Flats Photography Department's photographs and corresponding logs produced no records responsive to Mr. Bowers' request. *See* Email.

<sup>&</sup>lt;sup>1</sup> In response to his request, OLM provided Mr. Bowers copies of the September 4, 1959 and September 18, 1959 editions. *See* Determination Letter.

<sup>&</sup>lt;sup>2</sup> All OHA decisions issued after November 19, 1996 may be accessed at <a href="http://www.oha.doe.gov/foia1.asp">http://www.oha.doe.gov/foia1.asp</a>.

The courts in *Truitt* and *Miller* require that an agency responding to a FOIA request must "conduct a search reasonably calculated to uncover all relevant documents." Based on the foregoing, we find that OLM performed an extensive search reasonably calculated to reveal documents responsive to Mr. Bowers' request. Accordingly, the search was adequate under the FOIA and, therefore, Mr. Bowers' appeal should be denied.

# It Is Therefore Ordered That:

- (1) The Appeal filed on October 10, 2007 by Glen Bowers, OHA Case No. TFA-0226, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. §552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William M. Schwartz Senior FOIA Official Office of Hearings and Appeals

Date: November 7, 2007